

**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

TO THE HOUSE COMMITTEE CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Monday, February 2, 2015
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 268, RELATING TO DENTISTRY.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Mark Chun, D.M.D., Dental member of the Board of Dental Examiners ("Board"). The Board appreciates the opportunity to testify and offer comments on House Bill No. 268, Relating to Dentistry.

The purpose of House Bill No. 268 is to grant the Board the power to issue cease and desist orders for the unlicensed practice of dentistry and for any other act or practice in violation of the dental licensing laws.

The Board supports the intent of this bill but believes provisions already in place in Chapter 436B, Hawaii Revised Statutes ("HRS"), Professional and Vocational Licensing Act, adequately fulfill the purpose of this measure. Specifically, pursuant to HRS §§ 436B-27 and 436B-26.5, the Regulated Industries Complaints Office ("RICO") can pursue civil and criminal sanctions and citations for unlicensed activity. The civil and criminal sanctions RICO may pursue include fines, injunction relief, recovery of damages, and forfeiture of all tools, implements, armamentarium, documents, materials, or any other property.

Testimony on House Bill No. 268
Monday, February 2, 2015
Page 2

In addition, pursuant to HRS § 436B-23, there are summary suspension provisions and procedures to address serious violations by licensees.

Finally, the existing provisions noted above better address due process concerns that the Board has that are not provided for in this bill.

Thank you for the opportunity to testify on House Bill No. 268, and I will be available for questions.



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
INTERIM DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION, 2015

MONDAY, FEBRUARY 2, 2015
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 268
RELATING TO DENTISTRY

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE JUSTIN H. WOODSON, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on House Bill No. 268, Relating to Dentistry. My name is Daria Loy-Goto, Complaints and Enforcement Officer for the Department's Regulated Industries Complaints Office ("RICO"). RICO offers the following comments on the bill.

House Bill No. 268 authorizes the Board of Dental Examiners ("Board") to issue cease and desist orders for unlicensed dental activity and for any act that violates Chapter 448, Hawaii Revised Statutes ("HRS"). The bill also provides that

continuing unlicensed activity or conduct in violation of Chapter 448, HRS, is a class C felony.

As the enforcing agency, RICO typically handles complaints of unlicensed activity by filing a court action pursuant to §436B-27, HRS. In addition, §436B-26.5, HRS, authorizes the issuance of citations, with an order of abatement, and the assessment of civil penalties for unlicensed activity. As such, there are statutory remedies currently available to address unlicensed dental activity.

House Bill No. 268 also grants the Board the authority to issue a cease and desist order for any act in violation of Chapter 448, HRS. Currently, the Board may summarily suspend a license pursuant to §436B-23, HRS, for the protection of the public. This authority extends to all boards and commissions. As a result, the authority to issue a cease and desist order against a licensee may be unnecessary.

As an alternative to §436B-23, HRS, the Committee may wish to consider the summary suspension language in §453-8.4, HRS. This provision, enacted in 2013, specifically grants the Hawaii Medical Board the power to summarily suspend a license under certain conditions and sets forth specific procedures for a summary suspension to satisfy due process concerns.

Thank you for the opportunity to testify on House Bill No. 268. I will be happy to answer any questions the members of the Committee may have.

Hawaii State Legislature
Hawaii State Legislature
State House of Representatives
Committee on Consumer Protection and Commerce

State Representative Angus L. K. McKelvey, Chair
State Representative Justin H. Woodson, Vice Chair
Committee on Consumer Protection and Commerce



Monday, February 2, 2015, 2:00 p.m. Room 325
House Bill 268 Relating to Dentistry

Honorable Chair Angus L. K. McKelvey, Vice Chair Justin H. Woodson and
members of the House Committee on Consumer Protection and Commerce,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association (HDA) and its 960 member dentists. I appreciate the opportunity to testify in support of to of House Bill 268 Relating to Dentistry. This bill is similar to legislation that the HDA sought to have enacted in 2009, which would have empowered the Board of Dental Examiners to issue cease and desist orders to stop those persons who were practicing without proper licensure in Hawaii or whose conduct was in violation of the Hawaii statutes and rules governing the practice of dentistry in Hawaii. This bill addresses a problem that has arisen in which the Hawaii State Board of Dental Examiners is unable to address situations where the clear violation of the Hawaii dental laws cannot result in the immediate action necessary to stop those whose continued violation of the law constitutes a clear and present danger to the health and welfare of the public.

In light of incidents arising last year which brought to the public's attention the problem of policing dental professionals, it is hoped that this legislation would provide the Board of Dental Examiners and the Department of Commerce and Consumer Affairs (DCCA) the needed authority to immediately stop those who were not in compliance with the laws and rules governing the practice of dentistry in our State. Often times when a situation arises and the Department of Commerce and Consumer Affairs Regulated Industries Complaints Office (RICO) conducts an investigation of the violation of the law and is prevented in stopping the individuals who are violating the law merely by the individuals changing the legal entity they are using. Either the reluctance of the RICO to pursue the matter or the difficulty in stopping the individual violators has resulted in only rare occasions in where the violators have been actually stopped by the DCCA.

In the case of a dental licensee who is operating in violation of the law or rules, the length of time it takes to suspend or revoke the license puts the public in danger while that person continues to provide dental services, sometimes even after arrest and indictment. With the authority to order the licensee to cease and desist the delivery of licensed services, the Board of Dental Examiners can move swiftly to protect the public from the licensee and put pressure on the licensee to come in to compliance, if possible.

The State of Nebraska permits their dental licensing board to issue cease and desist orders and has experienced no problems with the exercise of this authority. Additional states which provide for either cease and desist authority or injunctive action include Illinois, Mississippi, Colorado, Montana and Kentucky.